

HB 785 -- ADULT HEALTH CARE CONSENT ACT

SPONSOR: White

This bill establishes the Adult Health Care Consent Act that specifies an order of priority of persons who can make health care decisions for an individual who is incapacitated and unable to consent to his or her own health care.

The order of priority is:

- (1) A court-appointed guardian;
- (2) An attorney-in-fact appointed by the patient in a durable power of attorney;
- (3) An individual given priority to make health care decisions for the patient by another provision of law;
- (4) A spouse, unless the spouse and the patient are separated or have a divorce pending;
- (5) A parent or adult child;
- (6) An adult sibling, grandparent, or adult grandchild;
- (7) Any other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient; and
- (8) Any nonrelative who reasonably is believed by the health care professional to have a close personal relationship with the patient.

Anyone authorized to make health care decisions for the patient under these provisions must base his or her decisions on the patient's wishes to the extent that the patient's wishes can be determined. When the patient's wishes cannot be determined, the authorized individual must base the decision on the patient's best interest. In considering treatment or withdrawal of treatments, he or she must seek and consider information concerning the patient's medical diagnosis, prognosis, and the benefits and burdens of the treatment to the patient.

These provisions cannot prohibit any person interested in the welfare of a patient from petitioning the probate court for an order determining the care to be provided or for the appointment of a guardian for the patient.

If persons of equal priority disagree on whether certain health care should be given, an authorized person, an involved health care provider, or any other interested person can petition the probate court for an order to determine what care is to be provided to the patient or for the appointment of a temporary or permanent guardian. If a health care professional has reasonable cause to make a report of an alleged perpetrator of abuse or neglect of a patient, the alleged perpetrator must not be given priority or authority to make health care decisions for the patient.

Any person in the order of priority who is not reasonably available, is not willing to make a health care decision, or is unable to consent as determined by the responsible health care provider must not be given a priority.

If a patient communicates to his or her attending physician or other health care professional responsible for the patient's care prior to becoming unable to consent to care that the patient did not want a certain person to be involved in any health care decisions, the physician or professional must not give priority or authority to that individual. Health care decisions on behalf of a patient who is unable to consent may be made by a person on the priority list if no person having higher priority is available immediately and, in the reasonable judgment of the attending health care professional, the delay in attempting to locate a person having higher priority presents a substantial risk or serious threat to the health of the patient. If no one on the priority list is available under these circumstances, the attending health care professional is authorized to make health care decisions for the patient. Treatment for the relief of suffering can be provided without consent at any time that an authorized person is unavailable, but a physician cannot make health care decisions that contradict a patient's religious beliefs or expressed instructions stated by the patient when he or she was able to consent.

A person who in good faith makes a health care decision cannot be subject to criminal or civil liability on account of the substance of the decision and does not become liable for the costs of care provided by virtue of providing consent. Any health care provider who in good faith relies on a health care decision must not be subject to criminal or civil liability or disciplinary action as long as the care was not provided in a negligent manner. Nothing in the act can limit an individual from seeking guardianship; prohibit a state agency or health care provider from conducting tests or providing treatment that is mandated or allowed by other provisions of law; affect the ability of the Department of Mental Health from executing its specified authority; or supersede the specified provisions regarding durable powers of attorney for health care, declarations of life support, or guardianship. The

provisions of the bill do not authorize consent to be given for any treatment, procedure, or other medical action for a pregnant patient that will put the fetus at risk of death or serious physical injury, except to protect the life of the mother.